

ESTTA Tracking number: **ESTTA620748**Filing date: **08/11/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Andale Energy Drink Co., LLC
Granted to Date of previous extension	08/13/2014
Address	P.O. Box 9484 Bakersfield, CA 93309 UNITED STATES
Attorney information	Paulo A. de Almeida Patel & Almeida, P.C. 16830 Ventura Blvd., Suite 360 Encino, CA 91436 UNITED STATES Paulo@PatelAlmeida.com Phone:(818) 380-1900

Applicant Information

Application No	85891919	Publication date	04/15/2014
Opposition Filing Date	08/11/2014	Opposition Period Ends	08/13/2014
Applicant	ACP IP, LLC 235 Altara Ave. Coral Gables, FL 33146 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Energy drinks
--

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Lack of Bona Fide Intent to Use, Trademark Act Â§1(b)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4455859	Application Date	05/08/2012
Registration Date	12/24/2013	Foreign Priority Date	NONE
Word Mark	ANDALE!		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 032. First use: First Use: 2011/09/29 First Use In Commerce: 2012/04/03 Non-alcoholic beverages, namely, energydrinks, energy shots, sports drinks, soft drinks, and bottled water

Attachments	85619866#TMSN.png(bytes) Notice of Opposition_DALE.pdf(25419 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Paulo A. de Almeida/
Name	Paulo A. de Almeida
Date	08/11/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

)	
)	
)	
Andale Energy Drink Co., LLC,)	
)	Opposition No. _____
)	Serial No. 85/891,919
Opposer,)	Mark: DALÉ
)	
v.)	
)	
ACP IP, LLC,)	
)	
)	
Applicant.)	
)	
)	

NOTICE OF OPPOSITION

Andale Energy Drink Co., LLC, a limited liability company (hereinafter "Opposer") believes it will be damaged by registration on the Principal Register of the mark DALÉ shown in Appln. Ser. No. 85/891,919, and hereby opposes the same.

As grounds of opposition it is alleged that:

1. Since at least as early as 2011, Opposer has been engaged in the development, marketing, advertising, distribution and sale of non-alcoholic beverages, including energy drinks, under the trademark ANDALE! (hereinafter, the "ANDALE! Mark").
2. Opposer's ANDALE! Mark is well-known among energy drink consumers and retailers.

3. As a result of Opposer's extensive marketing and advertising of the ANDALE! Mark since 2011, the ANDALE! Mark has come to represent highly valuable consumer goodwill. As a result, Opposer has established common law trademark rights in ANDALE! with priority of use in 2011.
4. Opposer is also the owner of the valid and subsisting U.S. Trademark Reg. No. 4455859 for the ANDALE! Mark (the "ANDALE! Registration"), which was filed on an "intent-to-use" basis on May 8, 2012, and was registered on the Principal Register on December 24, 2013. The ANDALE Registration covers "Non-alcoholic beverages, namely, energy drinks, energy shots, sports drinks, soft drinks, and bottled water" in International Class 032.
5. On April 1, 2013, Applicant, ACP IP, LLC (hereinafter, "Applicant") filed U.S. Trademark Application Serial Number 85/891,919 for the mark DALÉ, opposed herein, based on its alleged bona-fide intent to use the mark in commerce for "Energy drinks" International Class 032 (hereinafter, the "DALÉ Application").
6. According to the USPTO records, Applicant is a limited liability company of Florida having an address of 235 Altara Ave., Coral Gables, FLORIDA 33146.
7. The DALÉ Application was published for opposition on April 15, 2014, and Opposer filed an extension of time to oppose the application until August 13, 2014. This Notice of Opposition is timely.

PRIORITY OF USE AND LIKELIHOOD OF CONFUSION

8. Opposer repeats and incorporates the allegations set forth in paragraphs 1 through 7 as if fully stated herein.

9. On information and belief, Applicant does not have any basis for claiming trademark rights in DALÉ for energy drinks or related goods prior to Opposer's first use of the ANDALE! Mark in 2011.
10. On information and belief, Applicant does not have any basis for claiming trademark rights in DALÉ for energy drinks or related goods prior to Opposer's May 8, 2012, filing date of the application which matured into the ANDALE! Registration.
11. Opposer's first use of the ANDALE! Mark in the U.S. in 2011 predates the April 1, 2013, filing date of the DALÉ Application and any other priority date upon which Applicant may rely. Thus, Opposer has priority of use of the ANDALE! Mark based on its earlier use in commerce as well as based on the filing date of the application for its ANDALE! Registration.
12. Applicant's proposed mark DALÉ is similar to Opposer's ANDALE! Mark, and is likely, when applied to Applicant's proposed goods, namely, energy drinks, to cause confusion, mistake or deception among consumers within the meaning of 15 U.S.C. § 1052(d).
13. Applicant's proposed goods are identical or related to, and would be sold, advertised and directed at the same marketing and trade channels, and to the same consumers, as Opposer's goods.
14. Applicant's proposed DALÉ mark so resembles Opposer's ANDALE! Mark, and the goods are identical or similar such that the public is likely to view Applicant's proposed mark as denoting an affiliation, connection, or association of Applicant

with Opposer and as to the origin, sponsorship, and approval of Applicant's goods by Opposer, when that is not the case, thereby damaging Opposer.

15. On information and belief, Applicant knew or should have known of Opposer's prior adoption and use of its ANDALE! Mark, and therefore could not have formed the requisite good faith belief that no other person, firm, corporation or association has the right to use said mark in commerce, and consequently knew that such use is and would be in derogation and violation of Opposer's rights.
16. Opposer will be damaged by the registration of Applicant's proposed DALÉ mark because such registration would support and assist Applicant in the infringing use of the mark, and will give colorable exclusive statutory rights to the Applicant in violation and derogation of the prior and superior common law and federal registered trademark rights of Opposer.

LACK OF BONA FIDE INTENT TO USE, TRADEMARK ACT § 1(b)

17. Opposer repeats and incorporates the allegations set forth in paragraphs 1 through 17 as if fully stated herein.
18. On information and belief, Applicant did not make any actual commercial or bona fide trademark use of the DALÉ mark in commerce or otherwise prior to the April 1, 2013, filing date of the opposed application on or in connection with "energy drinks" or related goods.
19. On information and belief, Applicant did not, at the time of filing or at any time thereafter, have a bona fide intent to use the DALÉ mark in commerce on or in connection with "energy drinks" as recited in the application, and consequently, the application should be refused.

WHEREFORE, Opposer requests that registration of the mark sought to be registered herein, DALÉ of Appln. No. 85/891,919, be denied and that this opposition be sustained.

Respectfully Submitted,

Dated: August 11, 2014

By: /Paulo A. de Almeida
Paulo A. de Almeida
Alex D. Patel
Michael W. Schroeder
Patel & Almeida, P.C.
16830 Ventura Blvd., Suite 360
Encino, CA 91436
(818) 380-1900

Attorneys for Opposer,
Andale Energy Drink Co., LLC

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing **NOTICE OF
OPPOSITION** has been served on Jaime Rich Vining, the attorney of record for Appln.
No. 85/891,919 as listed in the USPTO database, on August 11, 2014, via First Class U.S.
Mail, postage prepaid to:

Jaime Rich Vining
Friedland Vining, P.A.
1500 San Remo Ave., Suite 200
Coral Gables, FLORIDA 33146

/Paulo A. de Almeida
Paulo A. de Almeida